Reading Law as Literature: The Judicial Poetics of *People v. Agao*

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Abstract

This essay reads the Supreme Court's language in *People of the Philippines v. Efren Agao* (2023) through the lens of Law and Literature. Using the methodology outlined in James Boyd White's "The Judicial Opinion and the Poem," it examines how the majority opinion constructs its ethical and social world through rhetoric rather than focusing on its substantive legal outcome. This reading is counterpointed by an analysis of Joi Barrios's poem, "Gahasa," which serves as a critical mirror. Through this mirror, the majority opinion in *People v. Agao* is read as constituting a social world that positions women and children not as persons in their own right, but as objects of analysis for an audience of legal technicians. In focusing on defining the "exact anatomical situs" of rape, *People v. Agao* further narrowed the legal and ethical understanding of the crime to the physical act itself, rather than the personhood and dignity of the victim—a move that departs from the intention of the Anti-Rape Law of 1997, which amended the Revised Penal Code provision on rape and reclassified it as a crime against persons rather than a crime against chastity.

Keywords

Feminist legal critique, judicial rhetoric, law and literature, Philippine jurisprudence on rape, Philippine poetry

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> Although at every turn unenviable, the Court now recognizes that there is perhaps no other way to reconcile and refine the current jurisprudence on rape than to peel away the euphemistic shrouds that have been resorted to so far, and instead inform case law with the exact anatomical situs of the pertinent body parts referred to in jurisprudence, which, unlike other matters that attend the crime of rape, are uncolored, self-evident and inarguable in their precision.
>
> — *People v. Agao* (2023)

In a single, 76-word sentence—one that is itself couched in euphemism and understatement—the Philippine Supreme Court in *People of the Philippines v. Efren Agao* announced a war on vagueness. The Court frames its mission as a "difficult but important opportunity" (2) to strip away the "euphemistic shrouds" (2) of past jurisprudence on rape and replace them with the "uncolored, self-evident and inarguable" (2) precision of clinical anatomy. It is a striking rhetorical moment: the Court suggests that by naming body parts correctly, it can resolve the "convoluted" (11) legal boundaries between attempted and consummated rape.

In *Agao*, the prosecution filed two counts of rape stemming from the complainant of a female child who had accused her mother's partner of rape. The trial court convicted the accused beyond reasonable doubt. The Court of Appeals and the Supreme Court affirmed the conviction of the accused. Though the affirmation of both higher courts would suggest the outcome uncontroversial, the case attracted attention because the Philippine Supreme Court used the case as an opportunity to address the legal boundary between attempted rape and consummated rape, even as the decision itself does not specifically state that this was an issue raised by the accused on appeal to the Supreme Court. Instead, the *en banc* decision penned by Associate Justice Alfred Benjamin Caguioa mentions that it saw *Agao* as a "difficult but important opportunity to clarify the anatomically accurate physical

threshold of contact that must distinguish between attempted and consummated rape in the physical degrees of rape through sexual intercourse" (2)—a difficulty that it portrays as being caused by "euphemistic shrouds" (2) and "uncertain semantics" resorted to in previous Supreme Court decisions (2).

This essay analyzes the Supreme Court *en banc*'s adoption of an "exact anatomical situs" (2) to determine the consummation of rape, its inclusion of anatomical diagrams of the female vulva in the decision (23), and its characterization of these moves as being "honest, clear-sighted, and unflinching" (38) as stylistic choices that operate to turn rape victims into unambiguous legal facts that would preclude any "hesitation" (18) on the part of members of the judiciary in making a finding of consummated rape[1]. Drawing from James Boyd White's theory of legal rhetoric as constitutive rhetoric (*Justice as Translation* 101), it argues that these stylistic choices constitute a specific social world in which women and children are positioned not as persons in their own right, but as objects to be analyzed by an audience of legal technicians. In fact, these choices effectively reverse earlier jurisprudence, which recognized that consummated rape could be committed even when a penis "merely touched" the external female genitalia.

By foregrounding penetration and anatomical detail, the majority opinion shifted attention away from the victim's personhood and dignity, performing a social world in which women and children are treated as objects for technical analysis rather than as full moral subjects. Thus, even as the Supreme Court *en banc* holds that treating women and children this way is necessary so that "the jurisprudential arc towards the dignity and integrity of women and children is not undone" (2), it becomes necessary to ask what kind of justice might objects in such a world access from the judicial system.

Law and Literature: Judicial Opinions as Constitutive Rhetoric

Law and Literature is an interdisciplinary field that engages in practices of reading and interpretation of texts. Its practitioners examine law's technique and imagery as

1 "What the Court here vitally observes, and which is now the focus of the instant clarification, is that this hesitation to appreciate the presence of the minimal genital contact that is required for consummation to be found persisted *despite* clear testimonial indication that the penis was in fact introduced to the aperture of the vagina in the manner that was contemplated in the earlier definitive rulings in *Orita, Dela Pena, Escober, Quinanola, Oliver, Campuhan* and *Castromero*. In the said cases, to recall, the Court already found as consummated rape that level of genital contact which was described as "*[pag]lapat*" or the nudging or pressing upon the vagina by the penis." *People v. Agao* 18-19.

represented in literary works ("law in literature"); study statutes, contracts, and judicial opinions as objects of literary theory and criticism ("law as literature"); and analyze cases where literary work and authors are subjected to regulation or litigation ("literature in law") (Posner 5).

Foremost among Law and Literature scholars is James Boyd White, whose book, *The Legal Imagination*, is considered "the founding text of the modern U.S. law and literature movement" (Hursh 12). In his 1973 textbook, White observed that studying legal texts was similar to the process of reading literature; thus he advocated that American law students should be taught to "read law as a kind of literature" ("The Judicial Opinion" 1685).

White believed that by adopting the literary practice of centering human experience whilst thinking about the law, future lawyers and judges could restore the connection between the legal and moral spheres —a divide widened by prioritizing economic value and efficiency over human value—in their professional practice (*The Legal Imagination Abridged* xiii). When lawyers center human experience in legal practice, they see their clients as whole persons rather than economic units and become conscious of the necessity to translate human beings into legal categories for their clients' claims to be legible before the law. White's aim was to make future lawyers and jurists aware of how legal and judicial practice constitute social reality, and that they can choose to practice law in a way that recognizes, rather than diminishes, human value.

Undergirding his prescription of reading law "as literature" ("The Judicial Opinion" 1685) is the assumption that law is not merely a system of rules but rhetoric—a way of using language to claim meaning for human experience. A judicial decision or opinion is an archetypal form of legal rhetoric. A jurist must act as a translator, performing an act of expression that "reconstitutes its own resources of language" (*Justice as Translation* 100). It is through this creative struggle to name the unnamable that law becomes rhetorically constitutive: it creates a community by inviting the reader to stand in a new relationship with law's subjects (*Justice as Translation* 101).

In White's formulation, every judicial decision creates a direct relationship with its readers. The way a decision addresses and positions its readers is part of a judicial text's constitutive meaning-making. For example, a decision might be written as "an authoritarian text, one that demands simple and total obedience of the reader," or as one that "define[s] the reader

as a person with a mind, with a heart—as a free agent who in reading the text is encouraged to activate these capacities in certain ways" (*Justice as Translation* 100). The relationship formed between the readers in either case is palpably different, and demonstrates the relative value accorded by each to the human.

White also draws attention to how judicial decisions create an indirect relationship with the parties of a case, "those others in the world about whom it speaks (or towards whom it invites its reader to take one attitude or another)" (*Justice as Translation* 100). These decisions establish the roles, voices, and relationships between the court and the people. In this way, jurists construct a social and ethical world defined by the values their decisions invite readers to share. Far from being engaged in the mechanical application of rules, therefore, jurists create meaning, value, and community with every decision they compose ("The Judicial Opinion" 1684). Every choice of words that jurists make is an ethical performance, defining a community and what it values.

By shifting the definition of rhetoric from mere persuasion to the "central art" of community-building ("Law as Rhetoric" 684), White redefines the judicial opinion as a site of immense moral consequence. If every decision is an act of translation that constitutes a social world, then the judge is less a neutral technician and more like a co-author of human culture. Ultimately, White's vision demands that this power be exercised with a specific ethical orientation: the value of a judicial opinion is not measured by its adherence to technicality, but by its capacity to reconstitute language into a community grounded in justice ("Law as Rhetoric" 684). In this framework, the jurist's work becomes a transformative endeavor where the aim is not simply to settle a dispute, but to establish and maintain a world where human value is the primary currency[2].

Reading the Judicial Opinion as a Poem

In "The Judicial Opinion and the Poem," White proposes a methodology that reads a

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2 At the outset, White's humanistic approach to teaching law was widely criticized. Richard Posner, for example, believed that reading the law as literature would do little more than expose students to examples of effective writing. He argued that it would be a waste of time to teach literature in law school because law and literature were two fields with divergent aims, even as they both emphasized rhetoric ("A Relation Reargued" 1370). Contemporary legal scholars have found, however, that White's framework of reading law as literature can serve as a valuable analytical approach, as demonstrated by Eliza S. Walker's analysis of the U.S. Supreme Court decision in *Obergefell v. Hodges*. In "Terms of Heart," Walker shows how the judicial style employed in the latter decision shaped the ethical and rhetorical world of a majority opinion, illustrating the interpretive insight that a Law and Literature perspective can bring.

judicial decision not as a mechanical application of rules, but as a poem—that is, a composition where language, as well as the social world, is constantly remade. Such a reading rejects focusing only on the legal holding of a decision, just as it would reject equating the literary value of a poem simply with its theme.

White describes three primary ways to read a judicial opinion as one would a poem:

1. The judicial decision is a composition.

To see a judicial decision as a composition is to recognize it as an artifact ("The Judicial Opinion" 1674): it is a deliberate construction of language. Its meaning is found not in a static rule or the decision's *ratio decidendi*, but is created by the internal relationship between its words, how these are organized and sequenced, any lists, diagrams, images or tables included, and even the matters that the decision excludes.

White observed that readers of poetry understand meaning-making in a similar way. A poem's words "do not function as isolated signals; they derive their power from the way the author places them in proximity to one another" ("The Judicial Opinion" 1675). However, it is more difficult for readers of judicial decisions to view the latter in the same way. Unlike a poem, a judicial decision is designed to terminate conflict with finality and provide closure through the exercise of state power (Wetlaufer 1545-1546). This demand often masks the fact that the authoritative tone of an opinion is in itself a stylistic choice, as is a judge's employment of a neutral or bureaucratic voice in drafting the decision.

White suggests that as readers engage with a judicial opinion, they can ask questions such as: What else could have been said here? What is this expression used instead of? ("The Judicial Opinion" 1674). Doing so helps them recognize a judicial decision' is a carefully composed text.

2. The judicial decision is a composition that reconciles contraries.

Turning to the idea of a composition's form, White observes that readers trained in literary analysis and in reading the law are similarly attuned to the need of a poem and of a judicial opinion to operate as a "coherent whole" ("The Judicial Opinion" 1678). In both fields, "it is a measure of achievement how much of what seems ineradicably opposed can be comprehended within a larger order" ("The Judicial Opinion" 1679). In poetry, the tropes

of irony, ambiguity, and metaphor serve as the primary tools for this achievement, working to bring together what would, outside of the poem, seem irreconcilable. Paradox, in fact, has been called "the center of poetic experience" precisely because it allows the poet to hold discordant qualities in a single, coherent form ("The Judicial Opinion" 1678, quoting Cleanth Brooks). By performing this reconciliation, a good poem provides a "momentary stay against confusion" ("The Judicial Opinion" 1681, quoting Robert Frost) in a world that otherwise feels formless and chaotic. Irony, ambiguity, metaphor, and paradox disclose depth by making more than one meaning perceptible to the reader at the same time. In each case, meaning is generated not by closure but by multiplicity. Ultimately, experiencing a good poem awakens the reader to the fact that reality is far more complex than the trite descriptions offered by everyday language.

In the practice of law, a judicial opinion is a text that is meant to resolve a legal argument between at least two parties. If an opinion merely adopted one party's narrative, this would not fulfill that purpose, as the party whose story was excluded from the opinion would feel unheard; the dispute would remain unresolved rhetorically, even though it has been legally settled. For White, such an opinion fails because its author does not perform the ethical duty to comprehend the discordant truths of both parties. It fails to create a "common language" that both parties, as well as other readers, can recognize as fair ("The Judicial Opinion" 1675). Thus, one ought to observe how the language of the decision moves to resolve these divergent narratives.

White suggests that when reading poems and judicial decisions, readers must ask whether the poet or jurist acknowledges what is valid in the opposing sides of a discourse, and whether these oppositions are successfully contained within a single, coherent order. To evaluate the value of the poem or of the judicial opinion, we must ask whether each had failed to include an element that ought to belong, or if either text had failed to give that element the force and attention it deserves ("The Judicial Opinion" 1679).

3. The judicial decision is a performance that constitutes a social world.

Underlying White's most ambitious claim—that a judicial decision creates a social world through language—is the assumption that the law "is not a system of rules…but a structure of thought and expression built of inherently unstable, dynamic and dialogic tensions. In this it is like a poem" ("An Old-Fashioned View" 386). From this viewpoint, a judicial

opinion is never a static object; it is a live linguistic event that constitutes a social world the moment a reader engages with its language.

This world-building begins with a performance of identity, where the text's author adopts a specific persona—a voice—who simultaneously creates an ideal reader (*Justice as Translation* 100). This performance establishes a social bond, turning the text into a shared space where a specific "I" and "You" meet. Within this space, the author remakes ordinary language through an act of re-definition, creating a localized language of the text that calls readers to inhabit the reality it creates.

It is imperative, therefore, to ask how the voice of a judicial decision presents itself. This requires moving beyond the *ratio decidendi* and analyzing the ethical character adopted by the judge as the text's author. White also suggests that the analysis extend to the relationships the voice forms with the decision's imagined, ideal reader, whom its actual readers are invited to become; the way the judicial voice characterizes the parties to the case, their advocates, other branches or agencies of government; and the kind of relations the decision establishes between all of the foregoing ("The Judicial Opinion" 1680-1681). The idea is to determine whether the language of a judicial decision performs the ideal of justice it professes—how an abstract value such as justice is given specific meaning within the unique circumstances recognized by and recorded in the decision.

The Constitution of "Rape" in Joi Barrios' "Gahasa"

This inquiry into the performance of the judicial voice finds a literary counterpoint in Joi Barrios's poem, "Gahasa" ("Rape"), which was included in the poet's collection, *Ang Pagiging Babae ay Pamumuhay sa Panahon ng Digma* (1990). By employing a poetic voice that catalogs human trauma as a series of numbered "Eksibit," "Gahasa" performs an echoic mention of the formulaic and technical language employed by legal professionals that White criticizes for its tendency to prioritize mechanical certainty over human recognition.

This literary reading, following White's methodology, suggests that the performative coldness of the voice in "Gahasa" establishes a social world where the human subject is systematically reduced to a list of inanimate objects presented as evidence during a rape trial.

Gahasa
ni Joi Barrios

(1) Ihanda ang ebidensiya.

(2) Eksibit Blg 1: patalim, baril
o kahit anong sandata
patunay ng pagbabanta.

(3) Eksibit Blg 2: panty na may mantsa
patunay ng kabirhenan ng dalaga.

(4) Eksibit Blg 3: sertipikasyon ng doktor,
patunay na
a: sapilitan
b: lubusan
ang pagpasok ng ari.

(5) Eksibit Blg 4: sertipikasyon ng pagkatao,
patunay ng hindi pagiging puta.

(6) Ipasok sa hukuman ang nasasakdal.
Iharap sa hukuman ang nagsasakdal.
Simulan ang panggagahasa.

1. Reading the poem as a composition

The constructedness of "Gahasa" is foregrounded by the way the poetic voice imitates judicial rhetoric in criminal trials. While the title of the poem informs the reader that the text they are about to read has to do with rape, the first line, which is also the first stanza of the poem, commands the addressee (including the poem's readers), "Ihanda ang ebidensya" (prepare the evidence). The next four stanzas that follow are a catalogue of objects, each referred to as an "Eksibit." The succeeding stanzas may be read as details supplied by the poem's speaker to qualify the evidence it has commanded its listeners to prepare, allowing readers to identify the poem's voice as one that speaks with the authority

and tenor of a judge.

Stanza 2 lists several deadly weapons under "Eksibit Blg. 1" as evidence of having been threatened. The definition of rape in Philippine criminal law considers threats as a means of securing carnal knowledge of a woman as primary element of the crime of rape[3]. Stanza 4 mentions a medical certificate as "Eksibit Blg. 3" to prove the forced and complete "penetration of the genitals." Like threats, force is a primary element of rape under Philippine criminal law. As we will see in *People v. Agao*, the penetration of the genitals ("ang pagpasok ng ari") is likewise a key element of the same crime. Read together, all these details create the expectation that the poem will present a truth about rape from a judicial perspective.

It is therefore shocking to read the final stanza, where the voice returns to the imperative mood and commands the accused and the accuser be brought before the court, and orders, "Simulan ang panggagahasa" ("Let the rape begin").

At the same time, however, the turn in the final stanza reveals the poem's animating purpose: the voice was never meant to be a true and faithful reproduction of judicial authority. The incongruity of the command in the final line—an order no judge would issue in open court—recasts the poem as a critique of legal proceedings. Telling too is the sequence in which the voice issues its final order: in real rape trials, the violation must have already happened before a case is heard in court. By making the voice issue the command, "Simulan ang panggagahasa," after the evidence of the physical violation had been presented as exhibits signals to the reader that the "rape" alluded to in the title is not, in fact the violation being tried by the court. By taking the neutral-sounding and clinical language of the courtroom and placing it in the poem, Barrios directs readers to recognize that judicial discourse is not an objective truth but a deliberate stylistic construction—one, that, in its clinical detachment, violates human dignity as much as the act it purports to judge. This violation of human dignity by court processes is the "rape" that the title of the poem refers to and judges.

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3 Art. 266-A of the Revised Penal Code states that:
Rape is committed—
1. By a man who shall have carnal knowledge of a woman.
a. Through force, threat, or intimidation….

2. Reading the poem as a composition that reconciles contraries

The success of Barrios's critique lies in the poem's ability to reconcile two opposing forces by employing echoic mention, allowing the poem to inhabit the very language it seeks to dismantle through irony.

Dan Sperber and Deirdre Wilson have proposed that irony is best understood as an echoic mention: it is produced when a speaker mentions a thought to show that it is ridiculous or absurd. Every instance of irony involves a thought or proposition; a speaker that repeats the thought in a manner that demonstrates their dissociation from it. Readers apprehend that an echoic mention is ironic because the writer uses language to communicate their disavowal of the thought or proposition echoed. If such a disavowal is not communicated, then readers might understand the speaker to share the thought or proposition echoed.

A closer look at the stanzas succeeding the first line of "Gahasa" hint at the poet's progressive dissociation from the judicial mindset it makes the poetic voice perform. For instance, although stanzas 2 and 4 purport to present evidence proving the elements of the crime of rape (threats, and force), the poet yokes the pieces evidence to their intended proof in the manner of a simple equation: any deadly weapon would necessarily prove a threat; a doctor's certification confirms sexual contact. In stanza 3, the same equation is made between a soiled pair of underpants and proof of a young woman's virginity, even though virginity is not an element of rape under Philippine law. Similarly, in stanza 4, a character certification is presented as proof that the person in whose behalf it is issued is not a whore ("patunay ng hindi pagiging puta")—even though rape is a crime regardless of the victim's sexual conduct. Although the poetic voice sounds like an objective judge, the content of its speech in these stanzas suggests that it is also a moral inquisitor, asking for things that are not legally required, casting doubt on the victim's integrity, and shaming them.

The poet's use of the word "puta" (whore) in the fourth stanza communicates most strongly the poet's dissociation from the judicial mindset echoed in the poem. It signals that the speaker is not really the neutral officer of the court it presents itself to be. By inserting a vulgar, misogynistic slur into the voice's performance-as-judge, the poet reveals her attitude towards a patriarchal judicial system that reduces rape victims into exhibits.

Thus, when the voice utters its final command in the last line, the readers are ready to reject the court's authority. Irony is realized.

The operation of irony in "Gahasa" allows for two opposing voices to occupy the same space—the space accorded to the poem's persona—creating a third, powerful meaning. On the one hand, the persona speaks in a clinical, procedural voice, the one that commands its addresses: "Ihanda ang ebidensya" (prepare the evidence). Representing the judicial mindset, it views the world and the human beings within it as a series of facts to be organized. On the other hand, the persona is made to include in its orderly, clinical speech, vulgar words and commands—all representative of the messy, violent, and judgmental reality of a patriarchal society. Without echoing the clinical, objective-sounding voice of the judicial mindset, the poem's final line would simply be a horrible statement, critiquing nothing. But without the final line, the catalogue of exhibits possesses none of the ironic force necessary to expose the violence of a judicial mindset that is revealed to be patriarchal at its core.

3. Reading the poem as a performance constituting a social world

To identify the outlines of the social world constituted by "Gahasa," one needs to inquire into the relationships formed by the poem's language with its ideal readers—that is, the readers that the poem's actual readers are invited to become—and others who are considered and discussed in that language.

Far from conveying the poet's sincere feelings, the poetic voice employed in "Gahasa" makes a deliberate performance. The poem's opening suggests that the speaker is a judge. By using the imperative mood and the language of commands, this voice establishes an aura of absolute control. By listing object and documentary evidence, it creates a world where order is prioritized over human trauma and suffering.

The poetic voice creates an authoritarian bond with its ideal readers. By beginning and ending with commands seemingly directed towards no one in particular, but meant to be read by the poem's readers, the voice positions readers as silent followers, rather than conversation partners. It assumes that readers will agree with its logic—when it accepts deadly weapons as proof that a perpetrator used threats to have sexual intercourse; when

it finds proof of virginity or a certificate of good moral character as relevant to determine whether one has been raped; and even when it commands, "Simulan ang panggagahasa."

Readers are compelled to participate in the voice's reduction of a rape victim's' trauma into a few pieces of real and documentary evidence. Throughout the poem, the voice mimicking the language of the court refers to the rape victim solely through objects and certificates issued by yet other authority figures, erasing the person who owned the stained underpants and suffered the violation.

The perpetrator of the rape is similarly depersonalized and reduced to a penis: the offense he commits is described clinically as "ang pagpasok ng ari" ("insertion of the penis,"), a phrasing that conceals the doer of the rape and his agency, obscuring the act's brutality, while erasing his victim completely.

Barrios reads the voice's systematic reduction of people critically, underscoring how legal language flattens and obscures the lived realities of violence and accountability. In the last stanza, when both perpetrator and victim are directly referred to as objects to be brought before the court, they are called "nasasakdal" (the accused) and "nagsasakdal" (the accuser)—two words which, but for the difference of a letter, appear exactly the same. But the equality of treatment that the voice accords both parties produces different effects: the reduction of the personhood and experience of the victim to mute objects on the one hand, the erasure of the offender's accountability on the other.

The ironic structure of the poem allows its readers to read this seemingly equal treatment of the victim and the offender as unjust, because the poet makes clear her dissociation from the hypocrisy of the mindset the poetic voice successfully echoes. In this way, she allows readers to recognize that in the social world made palpable by the echoed language of the poem, truth is not about what really happened, but about how well the evidence presented before a court fits a judicial script; that to bring a rape complaint to the legal system turns the most intimate trauma into a public exhibit for the court; that the justice one accesses through the courts becomes a recursive loop of trauma for women who have been subjected to rape.

People v. Agao's Judicial Poetics

In this section, the Supreme Court *en banc* decision, *People v. Agao*, will be analyzed using the same analytical lens which identified the disconnect between the lived trauma of rape victims and judicial performance echoed in Joi Barrios' "Gahasa." In *Agao*, the Court *en banc* adopted an "exact anatomical situs" (2) to determine whether rape had been consummated, and included diagrams and illustration of the female vulva as mechanisms to translate human trauma into unambiguous legal fact. It presented these moves as "unflinching" (2) stylistic choices designed to eliminate the doubt or reluctance judges might feel when applying the law on consummated rape.

Because the Court *en banc* says that such hesitation was a byproduct of past decisions that relied on euphemisms rather than naming specific body parts, the legal context of rape in the Philippines must be summarized to clarify the ambiguities that the Court *en banc* said it aimed to overwrite via *Agao*.

1. The legal context of rape in the Philippines[4]

As of this writing, the crime of rape in the Philippines is defined and punished under Art. 266-A of the Revised Penal Code[5], as amended by the Anti-Rape Law of 1997[6] and Republic Act No. 11648 of 2022:

> Rape is committed—
> 1. By a person who shall have carnal knowledge of another person.
> a. Through force, threat, or intimidation;

4 The Philippine legal system is categorized as a mixed legal system—that is, a legal system that has characteristics of both a civil law system and a common law system. In civil law systems, a body of laws or codes—systematic, topic-organized collections of written statutes enacted by legislative bodies—govern people, property and human relations. Judges focus on the facts of a case and apply the relevant code, rather than searching for past similar cases and relying on these past rulings to determine the outcome. In contrast, common law is shaped by judicial precedent. Judges' decisions form case law (jurisprudence) following the legal doctrine of stare decisis—that is, judges and courts must follow case law when addressing similar matters in the future. The mixed legal system of the Philippines is reflected in its rape law, which is defined by statutes but interpreted, expanded and refined through jurisprudence from the Supreme Court.

5 Act No. 3815 (1930).

6 Rep. Act No. 8353 (1997).

> b. When the offended party is deprived of reason or otherwise unconscious;
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> c. By means of fraudulent machination or grave abuse of authority; and
>
> d. When the offended party is under sixteen (16) years of age or is demented, even though none of the circumstances mentioned above be present: Provided, That there shall be no criminal liability on the part of a person having carnal knowledge of another person under sixteen (16) years of age when the age difference between the parties is not more than three (3) years, and the sexual act in question is proven to be consensual, non-abusive, and non-exploitative: *Provided, further,* That if the victim is under thirteen (13) years of age, this exception shall not apply.
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

The first paragraph of Art. 266-A, which defines rape as "carnal knowledge" obtained under four enumerated circumstances, is based on the definition of rape as it appeared in Art. 335 of the Revised Penal Code which, until its amendment by the Anti-Rape Law in 1997, considered rape as a crime against chastity, instead of a crime against persons:

> Art. 335. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The Anti-Rape Law of 1997 is a landmark legislation that not only transformed rape by

carnal knowledge from a crime against chastity to a crime against persons; it also included fraudulent machinations and grave abuse of authority as circumstances which, when employed to gain carnal knowledge of a woman, constitute the act of rape. In addition, it expanded the act of rape to include sexual assault:

> Art. 266-A. Rape is committed—
>
> 1. By a man who shall have carnal knowledge of a woman.
>
>   a. Through force, threat, or intimidation;
>
>   b. When the offended party is deprived of reason or otherwise unconscious;
>
>   c. By means of fraudulent machination or grave abuse of authority; and
>
>   d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Consistent with its reclassification of rape from being a crime against chastity to a crime against persons, Art. 266-D of the Anti-Rape Act considered "any physical overt act manifesting resistance…may be accepted as evidence in the prosecution of the acts punishable…." This provision eliminated the jurisprudential requirement that rape complainants demonstrate that they had "tenaciously resisted" the advances of the perpetrator for the latter's act to be prosecuted. It also recognized that silence or lack of resistance does not amount to a lack of consent if the complainants' circumstances prevented them from providing the same. Art. 266-C further recognized the existence of marital rape by discussing the "effect of pardon" when the perpetrator of rape is the husband of the complainant[7].

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7 Art. 266-C of the Revised Penal Code as amended, provides that if the offender is the legal husband, the subsequent pardon by the wife extinguishes the criminal action and penalty. While the statute's recognition of the existence of marital rape was lauded, the provision on pardon by the wife was criticized as being

In 2022, Republic Act No. 11648 further amended the statutory provision on rape by carnal knowledge in Art. 266-A, by increasing the age of statutory rape victims from below 12 to below 16 years of age. In addition, it brought the provision on rape by carnal knowledge in parallel to the second paragraph of the same provision, on sexual assault—so that the perpetrator and victim of rape by carnal knowledge no longer need to be a man and a woman. *Any person* who obtains "carnal knowledge" of the other through any of the circumstances set forth in the provision (through force, threat, or intimidation; when the offended party is deprived of reason or unconscious; through fraudulent machination or grave abuse of authority; when the offended party is under 16 years of age) will be found guilty of rape.

The foregoing discussion suggests that the Philippine legislative framework on rape is moving toward a more progressive, human-rights-based model. Viewed in this context, the Supreme Court's ruling in *Agao*, which distinguishes rape by carnal knowledge from rape by sexual assault by calling the former "rape by penile penetration," and insists that it must define the "anatomical situs of rape" so as to protect the "dignity and integrity of women and children" appears ironic, if not dissonant.

The Philippine law on rape comprises not only its statutory definition but also Philippine jurisprudence on rape. The Philippine Civil Code provides that "judicial decisions applying to or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines and shall have the force of law" (Art. 8)[8]. Correspondingly, the Supreme Court's pronouncements in cases—including criminal cases—form part of the law of the land.

From jurisprudence, one might glean how the Supreme Court views its own interpretation of statutes. In *Senarillos v. Hermosisima*, it states that such interpretations "constitute part of the law," rather than saying that its decisions are equivalent to statutes. In fact, they "merely establish the contemporaneous legislative intent that the…law carried into effect." [9]Thus,

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inconsistent classifying rape as a crime against persons or as a public crime instead of a private offense.

8 The Supreme Court has clarified that only decisions of the Supreme Court establish jurisprudence. *Miranda v Imperial*, 77 Phil 1066 (1947).

9 *Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956.

while the Supreme Court does not claim that its decisions are laws, these are deemed to be conclusive evidence of the law's meaning, and in that way become a source of law.

2. Reading *Agao* as a composition

The Supreme Court's role as the final arbiter of the law's meaning underscores the significance of the *Agao* decision as a deliberate composition. If judicial interpretations are indeed "conclusive evidence" of the law, then the specific stylistic choices made by the justices in this case represent a forceful exercise of that interpretive power.

This is immediately evident in the decision's structural hierarchy: rather than beginning with the conflicting narratives of the prosecution and the defense, or foregrounding the facts of the case, the Supreme Court *en banc* begins *Agao* by presenting its readers with a crisis of jurisprudence that it announces it will solve:

> In yet another horrid case of the rape of a child, the Court here takes the *difficult but important opportunity* to clarify the anatomically accurate physical threshold of contact that must distinguish between attempted and consummated rape in the physical degrees of rape through sexual intercourse.
>
> Although at every turn unenviable, the Court now recognizes that *there is perhaps no other way to reconcile and refine the current jurisprudence on rape* than to *peel away the euphemistic shrouds that have been resorted to so far, and instead inform case law with the* exact anatomical situs of the pertinent body parts referred to in jurisprudence, which, unlike other matters that attend the crime of rape, are uncolored, self-evident and inarguable in their precision. (2, emphasis supplied)

Here, the Court suggests that previous rulings had been unclear about the threshold for consummated rape, and this has caused the Court to produce varying rulings on the same. Because it blamed the variances in rulings on the Court's shyness from explicit language, it declared the necessity for the Court to name the body parts that would establish a threshold for consummated rape—as though biological terms were inherently precise and could resolve legal ambiguity.

But was the Court's self-defined priority task necessary to the resolution of the appeal? From a purely factual standpoint, the Court could have simply ruled on the case without making this clarification. This becomes clear if one considers the facts as narrated by the Court *en banc* itself.

In 2014, the complainant, then 14 years old, had accused her mother's partner of rape. She reported to the police that the accused had sexually abused her regularly since she was 10 years old. Charged with two counts of statutory rape, the accused denied the complainant's claims, and alleged instead that the complainant had merely been goaded by her biological father into filing the cases against him. The regional trial court ruled against the accused. Summarizing the trial court ruling, the Supreme Court noted that the decision principally relied on the complainant's testimony, describing it as "categorical, consistent, and straightforward" (*People v. Agao* 7).

The Supreme Court decision included extracts from the trial court records in its footnotes. These excerpts, taken from the complainant's sworn statement and from the stenographic transcript of her testimony at the trial court, suggest that the ruling relied on her precise identification of where the accused's penis made contact with her genitalia. For example, the extract from the transcript of stenographic notes records the prosecutor asking the complainant whether she saw and felt her assailant's penis and whether "he [was] able to penetrate your vagina" (*People v. Agao* 5). Despite the complainant's negative answer to the question, and despite the absence of any indication of lacerations in the complainant's hymen during the medico-legal examination, the trial court ruled that rape was nevertheless consummated rather than attempted. The trial court relied on a previous Supreme Court case stating that "carnal knowledge, as an element of rape, does not require full penile penetration of the female organ. Instead, consummation occurs once the penis of the accused, capable of consummating the sexual act, touches either the *labia or the pudendum*" (Agao 7). This notwithstanding, the accused argued before the Court of Appeals that consummated rape was not proven beyond reasonable doubt; and when the Court of Appeals upheld the trial court ruling, the accused raised the same argument to the Supreme Court.

Consistent with the rulings of the lower and appellate courts, the Supreme Court ruled that "the straightforward, candid and consistent testimony of AAA of the rape sufficiently established that appellant's erect penis did touch the labia of her vagina which, **under**

prevailing jurisprudence, falls within the operative definition of consummated rape" (*People v. Agao* 10, emphasis supplied).

What is evident from this summary is that all three courts appreciated the facts of the case in the very same way. Even the Supreme Court *en banc* explicitly stated that upholding the trial and appellate courts' findings of fact under prevailing jurisprudence justified the conviction. What this reveals is that the prevailing jurisprudence—euphemisms and all—is functional and clear enough to achieve a consistent result across all three levels of the judiciary.

But if the Court's stylistic move to go anatomical was unnecessary, what did it in fact accomplish?

3. Reading *Agao* as a composition that reconciles contraries

In the first two paragraphs of the decision, the Supreme Court *en banc* characterized previous jurisprudence on rape as "euphemistic" (2), "largely inaccurate" (10), and "unclear" (10, 19, 35), distinguishing them from the rule it would lay down in *Agao*, which it described as "accurate" (1, 11, 30, 34) and "exact" (2). It included a 12-page section "tracing …the evolution of the operative definition of consummated rape through penile penetration with an illustration of how cases have diverged…" (11). While all these might suggest a contested history, the opinion also signals that precedent was, for the most part, stable:

> The Court, in its wisdom, has long laid down jurisprudence to the effect that the level of penetration that is sufficient to appreciate consummation of rape by penile penetration is established by using a minimum litmus test, i.e., mere touching of an erect penis on the *labia* of the female genitalia…On this score, the Court recalls that the prevailing fine-tuned operative definition of the minimum threshold for a finding of consummated rape, from the nuanced jurisprudential development that began in *Orita* all the way to *Mariano* is when the prosecution established that the erect penis of the accused touched the *labia* of the *pudendum* of the victim's vagina as a precursor for

> penile penetration, regardless of whether the penetration, full or partial, was actually obtained. (*Agao* 22-23)

The majority opinion presents a paradox, then, when it celebrates a "fine-tuned," and "nuanced" jurisprudential threshold capacious enough to allow for a non-penetrative definition of carnal knowledge, yet insists that it must "peel away euphemistic shrouds" to provide the following standard instead, which it deemed "uncolored, self-evident, inarguable" (2):

> …for as long as the prosecutorial evidence is able to establish that the penis of the accused penetrated the vulval cleft or the cleft of the *labia maiora* (i.e., the cleft of the fleshy outer lip of the victim's vagina), however slight the introduction may be, the commission of rape already crossed the threshold of the attempted stage and into its consummation. (26)

In other words, *Agao*'s anatomical clarification was a rearticulation of settled doctrine in a narrower, clinical register. It requires penetration of the vulval cleft for a finding of consummated rape, whereas prior jurisprudence had defined rape more broadly, including acts involving non-penetrative contact—for example, when "mere touching of the external genitalia by a penis capable of consummating the sexual act constitutes carnal knowledge" (Agao 14).

The Court's attempt to reduce judgment to anatomical verification is echoed further by the inclusion of two diagrams of the female genitalia in the decision. The diagrams feel rhetorically redundant, particularly in light of the Supreme Court *en banc*'s stated rationale: in five cases of child rape, the Supreme Court itself reversed lower courts' findings of consummated rape to attempted rape because it found the child-victim's testimony "wanting in the degree [of] explicitness that would depict for the Court the very manner and extent of penile contact or penetration" (Agao 28). In each case, the Supreme Court effectively refused to accept the child's account as adequate evidence of penetration:

> [I]n the case of *People v. Tolentino*, despite a clear testimony on the part of the victim that the accused therein kept "trying to force his

sex organ into" her vagina, the Court there held that there was no sufficient proof offered to show that the penis touched the labia of the victim's vagina. (19)

…

[I]n the 2000 case of *People v. Arce, Jr. (Arce)* involving the rape of a nine-year-old girl, the minor victim repeatedly used the word "*idinikit*" to describe the position of the erect penis vis-a-vis her genitalia. The Court notes that "*idinikit*" is semantically similar to the word "*lapat*" which the Court appreciated as consummated rape in the earlier case of *Castromero*. Despite this, the Court in Arce was unconvinced that the rape was consummated because the victim's testimony indicated that appellant therein was not able to insert his penis into her vagina nor did she declare that there was the slightest penetration. (19-20)

…

Similarly, in *People v. Dimapilis*, the Court also found therein accused guilty only of attempted rape, mainly ruling that the testimony of the 10-year-old victim was confusing and made conflicting assertions regarding the entry of the penis into her vagina, despite the fact that on repeated occasions, as the Court therein recognized, the minor victim narrated that the accused "forced his organ into hers." (20)

…

[I]n the case of *People v. Quarre*, involving a father accused of raping his two minor daughters aged 12 and 16, the Court held that the "bare and true words of the victim," left uncleansed of ambiguous references by a medico-legal report, left it unpersuaded as to the precise character of the sexual act alleged therein. (20)

…

> [I]n the similar case of *People v. Brioso*, the Court held that since there was no other evidence, apart from the victim's testimony, that could confirm whether there was penetration of the labia, the accused therein could only be convicted of attempted rape. This, despite the consistent testimony of the minor victim therein that the accused kept trying to insert his erect penis into her vagina, albeit unsuccessful. (21)

The failure in these cases did not result from the Court's members' ignorance of the female anatomy, but because in these cases, the Supreme Court had refused to consider the child's testimony as sufficient proof.

The redundancy of the inclusion of anatomical maps in the decision is further underscored by a curious contradiction: having painstakingly defined the vulval cleft as the inarguable threshold for consummated rape, the Court effectively declines to apply this rule to the class of victims whose cases purportedly prompted the anatomical clarification. Adopting the position of Associate Justice Maria Filomena Singh, the only female justice of the Supreme Court who participated in deciding the case[10], the majority in *Agao* ruled that in the case of children nine years and below:

> …the Court takes judicial notice that in these cases, due to the underdeveloped genitalia of child victims in the pre-puberty age, an attempt of the penis to penetrate will already be likely indicative, at the very least, of the penis' introduction to the vulval cleft of the victim's vagina, with penetration considered made if it were not for the natural resistance of the victim's organ due to biological immaturity. (27)

In other words, in cases involving child victims nine years and below, the Court effectively collapses the distinction between attempted and consummated rape by treating an attempt at penetration as sufficient to meet the vulval cleft threshold.

Moreover, despite its earlier insistence on inarguable medical precision, the majority opinion, incorporating the main substance of the concurring opinion of Chief Justice

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10 Associate Justice Amy C. Lazaro-Javier took no part in the *Agao* deliberations because she had sat on the Court of Appeals division whose decision was being appealed.

Alexander Gesmundo, directs judges to rely on circumstantial evidence and human interpretation:

> [T]he Court further reiterates the jurisprudential guideposts which provide that when the necessary genital contact is not explicitly described through the testimony of the victim, whether minor or otherwise, courts can anchor their findings and appreciation of the genital contact on other aspects that would similarly depict the occurrence and circumstance of penile penetration. (27)

Here, the Court's commitment to anatomical precision again gives way to a reliance on bodily signs as proxies for the act of consummation itself. The paradox here is this: a rule that claims exactness ultimately depends on interpretive inference and may even fail to deliver justice for victims whose bodies do not exhibit the expected signs.

Taken together, these tensions suggest that *Agao* may be structured by a series of internal inconsistencies. The Court *en banc*'s turn to anatomical precision—presented as a means of clarifying and stabilizing doctrine—appears to rest on jurisprudence that was largely settled, while at the same time narrowing what had previously been a more capacious understanding of rape. Moreover, although the decision emphasizes an "inarguable" anatomical threshold for consummated rape, it continues to rely on interpretation, whether in the assessment of testimony or in the evaluation of circumstantial indicators.

Whereas poetic paradox deepens readers' understanding of the human condition, leading them to grasp meaning beyond what is stated, the inconsistencies in *Agao* may be read as producing the appearance of a self-executing law—one that frames medical verification as decisive, though judges must still interpret those medical results.

4. Reading *Agao* as a performance that constitutes a social world

In *Agao*, the Supreme Court *en banc* styles the judicial persona as a medical expert and creates a specific relationship with its ideal reader—a legal technician in search of a manual to determine whether the crime of rape had been consummated or merely attempted. The style of *Agao* speaks to a reader who prefers mechanical certainty over the messy reality of human life. The majority opinion's focus on the "anatomical situs" (2, 11, 13, 22) and

the "vulval cleft" (26, 27, 37) turns the rape survivor's body into a piece of evidence to be measured. What *Agao* does is to perform a medical monologue that speaks over a victim's experience rather than through it.

The performance of *Agao* ultimately constitutes a social world that Joi Barrios' "Gahasa"'warns us against—a world where the victim is no more than an object in the eyes of the law. By creating a world where women and children are positioned as anatomical sites to be checked against a list of injuries, the language of *Agao* arguably damages the very integrity it wants to protect. If a child's dignity is only recognized when her body shows signs of injury, then the law has stopped treating her as a person in her own right.

But what of the accused, the perpetrator of the rape?

Just as the perpetrator is reduced to a mere "ari" (penis) and his agency, concealed behind the clinical phrase, "ang pagpasok ng ari," in Barrios' poem, a similar erasure takes place in *Agao*. By centering its entire inquiry on an "anatomical situs," the Court *en banc* effectively replaces the will of the offender with an event that happens to a body part. But when a crime is defined solely by whether a specific threshold was crossed, the moral choice and actual violence of the perpetrator vanish.

In the final stanza of "Gahasa," Barrios highlights the linguistic blurring of the "nasasakdal" (accused) and the "nagsasakdal" (accuser)—two words nearly identical in form but opposite in consequence. The stylistic choices that shape *Agao* produce a similar result. By reducing the entire case to the "anatomical situs" the Court creates a world where they appear to be indistinguishable, and victim and perpetrator both disappear. The rape becomes a mechanical event involving body parts, rather than a violation of power committed by one person against another.

However, the following passage in *Agao* reveals that this objectification affects the female victim and the male perpetrator differently:

> [T]he crucial import of this recalibration or clarification is no more evident than in the net resulting penalties imposable on the convicted accused who, either in the attempted or the consummated stage, has nevertheless been found by the Court to have sexually assaulted a

> minor, at the very least. Namely, the penalty for attempted rape is two (2) degrees lower than the prescribed penalty of *reclusion perpetua* for consummated rape of a minor under 12 but not below seven years of age. Two (2) degrees lower :from *reclusion perpetua* is *prision mayor*, the range of which is six (6) years and one (1) day to twelve (12) years. Absent any aggravating or mitigating circumstances and applying the Indeterminate Sentence Law, the maximum penalty imposable upon an accused convicted of attempted rape of a minor is *prision mayor* in its medium period, while the minimum shall be taken :from the penalty next lower in degree, which is *prision correccional*, the range of which is six (6) months and one (1) day to six (6) years, in any of its periods. In palpable contrast, a penalty of *reclusion perpetua* awaits an accused that is convicted of consummated rape of a minor. (35)

When it focuses on the "considerable difference" in sentencing between these stages (Agao 35), the majority moves the focus away from the accused's violation of a person, preferring instead to make sure that the person convicted of rape might not be "unduly burdened" (22) with a life sentence for an act that might, under the Supreme Court's interpretation of the law on rape, be "only" an "attempt." By focusing on the "two degrees lower" penalty, the majority opinion treats the rape as a graduated technicality—a stance that centers the perpetrator's concerns while de-centering the victim's experience. This resembles the world depicted by Joi Barrios in "Gahasa": a world where the rape survivor, her trauma, her experience, and reality, are ignored.

While the majority opinion views the delivery of justice as involving the calculation of degrees of punishment within the confines of the Revised Penal Code, Associate Justice Leonen looks elsewhere. While Justice Leonen concurred with the *en banc*'s affirmation of the accused's conviction of consummated rape, he dissented with its insistence on viewing rape as a crime committed in stages: "There is no such thing as attempted rape. All rape is rape. All rape violates dignity. The finer points of the parts of the vagina touched by the penis is irrelevant" (Leonen 2).

Arguing that "rape is rape" regardless of degree of penetration, the dissent centers the crime of rape on the personhood of the victim. Leonen invokes the reclassification of rape as a crime against persons by the Anti-Rape Law of 1997, suggesting that the litmus test

for justice lies, not in anatomical diagrams, but in the Anti-Rape Law of 1997's singular focus on human personhood.

The majority's response to Justice Leonen is a study in rhetorical displacement:

> For while it is tragically true that, as Senior Associate Justice Marvic M.V.F. Leonen posits, the crime of rape is not suffered in degrees and the destruction in its wake is utterly complete, the existing provisions in the RPC and its amendments on rape continue to define that the offense itself, not its trauma, is committed in stages. On this score, and short of judicially legislating a new definition of the crime of rape, the Court must choose to apply itself to ensuring that no obscurity either unduly benefits the accused (in that the accused is convicted for attempted rape when in fact the crime was consummated) or unduly burdens the victims with the heartbreaking task of jumping through hoops of propounded questions in order to try and prove the genital assault required which jurisprudence itself has not so far made clear. (22)

In focusing on the Revised Penal Code, the majority opinion in *Agao* presents the law in a way that can mislead a general reader into thinking that the Revised Penal Code defines rape in strict anatomical terms. It does not. In reality, *Agao* reinterprets jurisprudence on what constitutes "carnal knowledge," not the statute itself. The anatomical strictness adopted in *Agao,* justified by the need to distinguish attempted rape from consummated rape, is therefore a rhetorical and jurisprudential choice, not a legal inevitability.

It is important to recall that the Supreme Court itself has refused to recognize a "frustrated" stage of rape, even though the Revised Penal Code generally provides for stages of any offense[11]. This suggests that it has the discretion and interpretive latitude to affirm that "mere touching" of the external genitalia by a penis constitutes consummated rape, thereby maintaining consistency with existing jurisprudence that preceded its more restrictive pronouncements in *Agao,* while avoiding unnecessary anatomical strictness.

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11 People v. Orita. G.R. No. 88724 (1990).

The Anti-Rape Law of 1997, which amended the Revised Penal Code and reclassified rape as a crime against persons rather than against chastity, provides space for a more capacious, person-centered understanding of the offense. Upholding a broader interpretation of "carnal knowledge" would therefore have aligned the Court's jurisprudence more closely with the legislative intent of centering the victim's personhood and dignity.

Instead of heeding the person-centered approach established by the Anti-Rape Law of 1997, the majority opinion favors an approach that turned a rape survivor into a body part or a medical map. The rhetorical redundancy of the anatomical situs and the anatomical diagrams displayed in *Agao* weakens the claim that these are necessary to secure fair sentencing and protect victims from "jumping through the hoops" (22). The majority opinion itself confirms that established jurisprudence dictates the victim's testimony is sufficient for conviction if it is credible[12]. It was the Supreme Court itself, in five divergent cases, that showed "hesitation" in believing the clear testimony of the child victims, thus downgrading the lower court findings of consummated rape. The Court's anatomical turn allows it to sidestep the challenging responsibility of believing a human voice.

Justice Leonen's dissent arguably gestures towards a more restorative performance: it reminds us that when rape is understood as a crime against persons, the "anatomical situs" vanishes, and the victim is finally seen not as a diagrammed object, but as a human being with an indivisible and inarguable dignity. It is possible to imagine that in such a world, justice would not be found in the precision of an anatomical diagram, but in the judge's capacity to listen carefully to the "bare and true words" (20) of a child.

12 People v. Castromero, 345 Phil. 653,662 (1997).

Works Cited

Barrios, Joi. "Gahasa". *Ang Pagiging Babae ay Pamumuhay sa Panahon ng Digma.* Babaylan Women's Pub. Collective, 1990, p 82.

Gesmundo, Alexander. *Concurring Opinion, People v. Agao*, G.R. No. 248049 (2023). The Supreme Court of the Philippines, 30 March 2023, https://sc.judiciary.gov.ph/248049-concurring-opinion-chief-justice-alexander-g-gesmundo/

Hursh, John. "A Historical Reassessment of the Law and Literature Movement in the United States." GRAAT (*Group de Réflexion et d'Action sur l'Amérique Transatlantique*), GRAATonline, June 2013, www.graat.fr/1hursh.pdf

Leonen, Marvic M.V. F. L. *Concurring and Dissenting Opinion, People v. Agao,* G.R. No. 248049 (2023). The Supreme Court of the Philippines, 30 March 2023, https://sc.judiciary.gov.ph/248049-dissenting-and-concurring-opinion-justice-marvic-m-v-f-leonen/

Posner, Richard A. *Law and Literature.* 3rd ed., Harvard University Press, 2009.

—. "Law and Literature: A Relation Reargued." 72 *Virginia Law Review* 1351 (1986).

Republic of the Philippines, Congress. *Act No. 3815, as amended, "Revised Penal Code."* December 8, 1930, https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/28/20426

—. *Republic Act No. 386, "An Act to Institute and Ordain the Civil Code of the Philippines."* June 18, 1949. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/53360

—. *Republic Act No. 8353, "Anti-Rape Law of 1997."* September 30, 1997. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/4301

—. Republic Act No. 11648, *"Special Protection of Children Against Abuse, Exploitation, and Discrimination Act."* March 4, 2022. https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/94255

Republic of the Philippines, Supreme Court. *People of the Philippines v. Agao,* (Majority Opinion) G.R. No. 248049 (2023). The Supreme Court of the Philippines en banc, March 30, 2023. https://sc.judiciary.gov.ph/wp-content/uploads/2023/03/248049.pdf

—. *People of the Philippines v. Castromero,* 345 Phil. 653 (1997).

—. *People of the Philippines v. Orita.* G.R. No. 88724 (1990).

—. *Senarillos v. Hermosisima,* 100 Phil. 501 (1956).

Singh, Maria Filomena. *Concurring Opinion, People v. Agao,* G.R. No. 248049 (2023). The Supreme Court of the Philippines, 30 March 2023, https://sc.judiciary.gov.ph/248049-separate-concurring-opinion-justice-maria-filomena-d-singh/

Sperber, Dan, and Deirdre Wilson. "Irony and the Use-Mention Distinction." *Radical Pragmatics,* edited by Peter Cole, Academic Press, 1981, pp. 295-318.

Walker, Eliza S. "'Terms of Heart': Judicial Style in *Obergefell v. Hodges*." *Boston College Law Review,* vol. 61, no. 5, 2020, pp. 1935–1965.

Wetlaufer, Gerald B. "Rhetoric and its denial in legal discourse." *Virginia Law Review,* vol. 76, no. 8, 1990, pp. 1545-1597, https://doi.org/10.2307/1073163.

White, James Boyd. "An Old-Fashioned View of the Nature of Law." *Theoretical Inquiries in Law*, vol. 12, no. 1, 3 Jan. 2011, pp. 381–402, https://doi.org/10.2202/1565-3404.1272.

—. *Justice as Translation: Essay in Cultural and Legal Criticism.* University of Chicago Press, 1990.

—. "Law as rhetoric, Rhetoric as law: The Arts of Cultural and Communal Life." *The University of Chicago Law Review*, vol. 52, no. 3, 1985. https://doi.org/10.2307/1599632.

—."The Judicial Opinion and the Poem: Ways of Reading, Ways of Life." *Michigan Law Review*, vol. 82, no. 7, 1984, p. 1669., doi:10.2307/1288613.

—. *The Legal Imagination: Abridged Edition*. The University of Chicago Press, 1985.

—. *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*. Little Brown and Co., 1973.